

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

STAFF SUMMARY REPORT (Keith Lichten)
MEETING DATE: November 18, 2015

ITEM: 7

SUBJECT: **Municipal Regional Stormwater NPDES Permit – Municipalities and Flood Management Agencies in Alameda County, Contra Costa County, San Mateo County, Santa Clara County, and the Cities of Fairfield, Suisun City, and Vallejo in Solano County –Reissuance of NPDES Permit**

CHRONOLOGY: October 2009 – Permit issued

DISCUSSION: This Revised Tentative Order would reissue the Municipal Regional Stormwater Permit (MRP) for 76 municipalities and local agencies in Alameda, Contra Costa, Santa Clara, and San Mateo counties, and the cities of Fairfield, Suisun City, and Vallejo (Permittees). Appendix A contains the Revised Tentative Order, including the revised Fact Sheet, showing changes to the May 2015 Tentative Order. Appendix B1 contains a summary of notable changes to the May 2015 Tentative Order. Appendix B2 contains errata and clarification changes made to the Revised Tentative Order since it was public noticed in October. Appendix C contains responses to comments received on the May 2015 Tentative Order, and all comment letters received within the allowed comment period are contained in Appendix D.

The Tentative Order and Fact Sheet were available for public comment from May 11 through July 10, 2015. During the public comment period, we held two Board testimony hearings on the Tentative Order. At those hearings, interested stakeholders, including the Permittees, U.S. EPA, environmental groups, industry representatives, and the public communicated their concerns and interests directly to the Board. Additionally, Board members asked questions of staff and stakeholders and gave direction to staff on aspects of the Tentative Order.

In addition to these formal opportunities for comment, we worked extensively with the Permittees and other stakeholders over the two years leading up to release of the Tentative Order and subsequent to its release. This included regular MRP steering committee meetings with a broad cross section of Permittees and U.S. EPA staff; meetings with groups of Permittees, including BASMAA director meetings and public works and planning directors' meetings; provision-specific meetings with the Permittees and interested parties; and meetings with individual stakeholders, including U.S. EPA, Baykeeper, Save the Bay, and industry representatives.

As an outgrowth of our review and consideration of comments received and direction from the Board, we revised the Tentative Order and Fact Sheet, and, on October 19, 2015, we public noticed the Revised Tentative Order and our responses to formal comments received. Since that time, we have continued to discuss the Revised Tentative Order with stakeholders and have made minor corrections and

clarifications as reflected in Appendix B2. We expect further testimony at the Board hearing on the Revised Tentative Order.

The most significant concerns and issues raised by commenters and the Board were on the MRP requirements for New and Redevelopment (Provision C.3), Water Quality Monitoring (Provision C.8), Trash Load Reduction (Provision C.10), and Mercury and PCBs Controls (Provisions C.11 and C.12). We describe these provisions below, highlight some of the comments and issues raised, and discuss our responses and associated revisions reflected in the Revised Tentative Order.

New Development and Redevelopment (Provision C.3)

The Tentative Order proposes a new requirement that was not in the previous permit: for the Permittees to develop green infrastructure plans (GI Plans) to transition from traditional “gray” storm drain infrastructure to green. The GI Plans are also key tools for the Permittees to ensure that they will achieve wasteload reductions in mercury and PCBs from runoff. The provision also now allows the Permittees to propose a new approach for hydromodification management and proposes requirements to ensure that pervious pavements are appropriately inspected and maintained as part of a project’s overall low impact development measures.

Permittee comments included requests for additional time for the GI planning effort; that GI planning dates be aligned with relevant dates for mercury and PCB reductions; and that certain requirements, such as for pervious pavement inspection, be clarified or eliminated.

In response, we revised the Tentative Order to provide additional time for certain GI planning tasks and to align the target dates for the GI planning requirements with the dates for mercury and PCB reductions. We maintained proposed pervious pavement inspection requirements but provided additional flexibility on inspection frequency. This reflects the key role that such pavements can play in reducing and infiltrating runoff, and our expectation that they be regularly inspected along with other clean water measures in a project, like bioretention cells.

We also revised language to allow submittal of the new hydromodification analysis method acceptable to the Executive Officer, rather than as a permit amendment before the Board. In addition, in response to the Contra Costa Permittees’ request, we revised language requiring additional analysis of their approach to hydromodification management to clarify the items to be considered and to list potential outcomes.

Water Quality Monitoring (Provision C.8)

The Tentative Order requires monitoring to determine compliance with permit requirements; to assess the physical, chemical, and biologic condition of receiving waters; and to inform determinations of additional actions that may be necessary to attain water quality standards for pollutants of concern.

The Permittees and the Baykeeper raised issues with the proposed monitoring requirements. The Permittees were concerned with the costs of the proposed

monitoring, whereas the Baykeeper questions the adequacy of it. The proposed monitoring requirements are an outgrowth of our over 25 years of experience with monitoring of municipal stormwater in the Region and the use of monitoring to inform decision-making. They reflect a balance between the costs of monitoring and monitoring information needed to inform decisions on the implementation of management actions, while ensuring that the monitoring necessary to demonstrate compliance with permit requirements is conducted. The proposed monitoring requirements are also informed by and consistent with our Regional Monitoring Program's Tributary Loading Strategy, our Surface Water Ambient Monitoring Program, U.S. EPA guidance on municipal stormwater monitoring, and recommendations in the 2009 National Research Council report to Congress, "Urban Stormwater Management in the United States."

In response to issues raised, we made revisions to the Tentative Order, including consolidating all proposed toxicity and pesticides monitoring requirements into one subprovision. We also revised the Fact Sheet to add language describing the monitoring requirements and approach and how they meet applicable federal Clean Water Act regulations.

Trash Load Reduction (Provision C.10)

This Tentative Order includes requirements for the Permittees to reduce trash discharges from municipal storm drain systems from 2009 levels by 60 percent by July 2016, 70 percent by July 2017, and 80 percent by July 2019. The 60 percent reduction level is a performance guideline (action level). Those Permittees that do not attain the action level are required to submit a plan of actions to attain the 70 percent reduction level. The 70 and 80 percent reduction levels are mandatory deadlines. It also maintains the goal, established in the previous permit, of 100 percent trash load reduction or no adverse impact to receiving waters from trash by July 2022.

The Permittees expressed concern that the trash reduction requirements would be difficult or costly to meet by the dates proposed. Board members, at the July Board hearing, expressed concern that the 80 percent reduction level proposed as a performance guideline in the May 2015 Tentative Order, as opposed to a mandatory deadline, could result in a lower likelihood that the reduction would be achieved. The Permittees also expressed concern about the effort required to account for trash from private property and requested additional load reduction value for source controls and additional load offset value for trash hot spot cleanups and direct discharge controls. In addition, the Permittees and other parties, including U.S. EPA, requested clarification and revision of proposed receiving water requirements.

In response to comments received and Board direction, we revised the Tentative Order to set the 80 percent reduction level as a mandatory deadline rather than a performance guideline. We also revised the Tentative Order to allow up to a 10 percent load reduction value (up from a maximum of 5 percent) for jurisdiction-wide source control actions, such as bans of persistent trash items, based on substantive and credible evidence. In addition, we revised the provision to increase the value of offset opportunities. The Permittees would be allowed to offset up to 10 percent of trash load reduction requirements (increased from 5 percent) by

conducting additional cleanup of creek and shoreline areas beyond mandatory minimum trash hot spot cleanups. Further, we revised the provision to allow the Permittees to offset up to a revised 15 percent of trash load percent reduction requirements (increased from 10 percent) by developing and implementing a comprehensive plan for control of direct discharges of trash to receiving waters from sources like dumping and homelessness. In response to Permittee comments, we maintained the requirement to address trash discharges from private lands but clarified that detailed mapping of private lands draining to the municipal storm drain system is not a requirement.

We revised the proposed receiving water monitoring requirements to foster the development and testing of trash monitoring tools and methods, recognizing that receiving water monitoring for trash is a developing area and that there are challenges, for example, in monitoring during wet weather and distinguishing between municipal storm drain discharges and direct discharge sources. The revised language requires a plan that will identify and test monitoring tools and protocols in a range of discharge and receiving water scenarios. It must include the opportunity for input and participation by interested parties, including, but not limited to, the Permittees, U.S. EPA, and environmental groups, as well as scientific peer review and testing of the tools and protocols. The intent is to test trash receiving water monitoring tools and protocols that may be used during the next permit term, when the Permittees will be expected to achieve a 100 percent reduction in trash discharges from their storm drain systems, or no adverse impact to receiving waters.

Mercury and PCBs Controls (Provisions C.11 and C.12)

The MRP is the appropriate regulatory vehicle to ensure that the Permittees implement the urban stormwater wasteload allocations of the San Francisco Bay mercury and PCBs TMDLs. As such, the requirements proposed in the Tentative Order are based on an updated assessment of the control measures available to reduce these pollutants to the maximum extent practicable during this permit term, consistent with the TMDL implementation plans adopted by the Board. The proposed PCB requirements include load reductions of 0.5 kg/yr by the mid-term of the permit and 3.0 kg/yr by the end of the permit term. The latter includes requirements to manage PCB-containing materials during building demolitions to keep PCBs from entering municipal storm drain systems. The Tentative Order also includes requirements to plan and implement green infrastructure projects to meet short-term PCBs load reductions by the end of the permit term and to meet long-term load reduction goals. The Tentative Order includes similar green infrastructure-based load reduction requirements for mercury.

The Permittees' main issue is with the numeric PCBs and mercury load reduction requirements. They are concerned with costs and uncertainties in the availability and effectiveness of control measures necessary to meet the load reductions. They are also concerned that numeric requirements make them vulnerable to third party lawsuits if they do not comply. The Permittees requested expressing the load reduction performance criteria as action levels that would call for a plan of actions to attain them if they are not attained rather than direct enforcement of the levels.

To resolve some of their concern, we worked with the Permittees to develop an appropriate default accounting system for the required load reductions, and we revised the Tentative Order to allow the Permittees opportunities to improve and expand this accounting system. We also revised the Tentative Order to provide a 2 kg/yr load reduction (two-thirds of the 3 kg/yr required during the permit term) if the Permittees implement the required program to manage PCB-containing materials during building demolitions. These revisions provide the Permittees with the means to comply with the load reduction requirements within the permit term. If the Permittees implement actions in accordance with the load reduction accounting system, but fail to attain the required load reductions, the Board may address the non-compliance in a fair manner using its enforcement discretion. The Board may also consider amending the MRP, in accordance with the MRP's reopener provision (C.18), if the Permittees provide new information not currently available that would justify different requirements.

The Revised Tentative Order implements federal Clean Water Act requirements by prescribing consistent and accountable actions to reduce pollutants to the maximum extent practicable. Implementation of these actions will satisfy the Permittees' responsibility to make measurable progress towards the attainment of water quality standards in the Bay and its watersheds. We recognize that new requirements will demand new resources, so the Revised Tentative Order reduces some requirements compared to the previous permit and phases in new requirements over the 5-year permit term. Finally, to the extent that a permit requirement causes unintended consequences or the intent of a requirement is not attainable, the Revised Tentative Order contains a re-opener provision that would allow the MRP to be modified in the future in response to changed conditions and new information.

RECOMMEN- Adoption of the Revised Tentative Order
DATION:

APPENDICES: A. Revised Tentative Order, Attachments, and Fact Sheet
B1. Summary of Notable Changes
B2. Errata Corrected and Clarifications
C. Response to Comments Received
D. Comment Letters Received